

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

MID-VALLEY CANDY COMPANY,	:	CIVIL ACTION
	:	NO. 99-5216
v.	:	
	:	
R.J. REYNOLDS TOBACCO COMPANY,	:	
et al.	:	

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EAGLE DIVERSIFIED, INC.	:	CIVIL ACTION
	:	NO. 99-5382
v.	:	
	:	
R.J. REYNOLDS TOBACCO COMPANY,	:	
et al.	:	

**MEMORANDUM**

BUCKWALTER, J.

February 8, 2002

In connection with third-party defendant Edward M. Bush, Sr.'s Motion to Stay Proceedings, all responding parties have set forth the factors the court should weigh in exercising its discretion to stay civil proceedings.

It should be kept in mind from the outset that a stay of proceedings is an extraordinary measure and the burden rests upon the party requesting the stay to essentially make out a clear and convincing case of hardship or inequity which will result if a stay is not granted.

The first factor is the plaintiff's right to pursue its claim; that is to say, a party seeking vindication for an alleged wrong doing should be able to do so expeditiously. The primary reason, of course, is that delay in discovery can result in, among other things, loss of memory and loss of evidence in the form of records, for example. In this regard, defendant argues that substantial discovery has been completed, a point which counterclaim plaintiff does not seriously dispute, but argues instead that the time that has already passed since these actions were commenced in 1999 militate granting a stay. It is also possible that delay may dissipate assets preventing any meaningful recovery.

In light of the passage of time and the fact that, even if substantial discovery has been completed, significant discovery remains, defendant has failed to convince me that a stay is not potentially prejudicial to counterclaim plaintiff.

Secondly, the defendant claims "the impossible dilemma of the Hobbesian [sic] choice between testifying on behalf of himself and his children to defend the civil case and remaining silent to defend the criminal allegations." (Defendant's memorandum in support of his motion at p. 2; Docket No. 121). The Hobbes in the word Hobbesian comes from the English philosopher, Thomas Hobbes. While certainly Hobbes may have offered one some philosophical choices, it was another Englishman, Tobias Hobson, to whom we are indebted for the famous or infamous Hobson's choice, which was really no

choice at all.<sup>1</sup> I assume that this is the choice defendant is referring to, but his choice is hardly a Hobson's, one even though placing the children's interest before the parent's would normally be the more palatable choice.

Thirdly, in considering the burden on the court in whether to grant a stay, it is well to note, as mentioned before, that this is an "old" case. And while the court's desire to control its docket and to expeditiously resolve cases before it should not be the most important factor, it must nevertheless be put into the mix. This factor also weighs against the request. In fact, the history of this litigation, covering two districts, fairly cries out for a resolution sooner rather than later.

A fourth factor is the burden on non-parties. I am unable to determine what if any affect a stay would have in this regard.

Finally, the court should consider the public interest. In a general sense, I suppose the public interest is served by efficient disposition of cases. Unlike a criminal case, however, it is hard to find any specific public interest that would be promoted by either granting or denying a stay in this case – at least the parties have identified none.

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1. It is reported that Mr. Hobson, the Cambridge carrier, from whom one could supposedly rent a horse, required that his customers take the horse that happened to be nearest the stable door or go without. III Oxford English Dictionary (2<sup>nd</sup> Ed.1989). American Henry Ford is said to have offered his own "Hobson's choice." In 1914, he offered customers of the Model T a choice -- a car "in any color so long as it is black." [www.dictionary.com](http://www.dictionary.com).

An order follows.<sup>2</sup>

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2. The court's memorandum would not be complete without reference to the following passage in defendant's reply brief (Docket #132):

“..., counsel for Edward M. Bush, Sr., Edward M. Bush, Jr., and Cheryl Bush (collectively, “the Bush defendants”) has had the misfortune of reading what was supposed to be a response brief from Plaintiffs regarding the appeals in the above-captioned matters. These cases have been a learning experience because [counsel for plaintiff] embodies many of the things that have become a problem with our profession. This writer has always been taught that one should never personalize pleadings or mislead the Court with half-truths. Unfortunately, while [counsel for plaintiff] speaks to others about the code of civility, it does not seem to apply to him. His present brief is a personal attack on [defendant's counsel] as a lawyer and a person. Not only is this writer offended by it, but he would be happy to test his reputation amongst the Bar of Philadelphia with [plaintiff's counsel].”

To some extent, plaintiff's counsel has made an attack on the character of defendant's counsel rather than the character of his contentions; on the other hand, the quoted portion of defendant's brief is, in my opinion, hyperbolic, leaving one to believe that counsel is protesting too much. Both are advised to concentrate on the issues and avoid ad hominem rhetoric.

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**ORDER**

**AND NOW**, this 8<sup>th</sup> day of February, 2002, upon consideration of Third Party Defendant Edward M. Bush, Sr.'s Motion to Stay Proceedings Pending Criminal Investigation (Docket No. 121), and all responses in opposition thereto, it is hereby **ORDERED** that said Motion is **DENIED** in its entirety.

IT IS FURTHER **ORDERED** that the depositions of Renato Mariani, Edward Bush, Sr. and Robert Dobrowolski will occur within fourteen (14) days of the date of this order. All other deadlines for depositions contained in this Court's

December 17, 2001 Order will be adhered to by the parties, except that the depositions of Daniel Rose, Joseph Dollard, Edward Bush, Jr., Cheryl Bush, Robert Kane and Carlton Preate will be completed by February 28, 2002.

BY THE COURT:

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RONALD L. BUCKWALTER, J.